



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 220225-0059]

RIN 0648-BJ09

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendment.

SUMMARY: This document makes technical corrections to a final rule that modified the Atlantic Large Whale Take Reduction Plan. The correction reinstates paragraphs that were inadvertently removed from the Code of Federal Regulations when the final rule published on September 17, 2021.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Colleen Coogan, Marine Mammal/Sea Turtle Branch Chief, phone: (978) 281-9181 or email: Colleen.Coogan@noaa.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

NMFS published a final rule to implement modifications to the Atlantic Large Whale Take Reduction Plan (ALWTRP or Plan) on September 17, 2021 (86 FR 51970), to meet the goals of the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA). The final rule became effective on October 18, 2021. While the modifications were intended to revise the then existing § 229.32(a) through (c), the final rule inadvertently replaced the entirety of § 229.32 resulting in the accidental removal of

paragraphs (d), (e), (f), (g), (h), and (i) from the Code of Federal Regulations. These sections apply to gillnet fisheries and Southeastern U.S. fisheries, and NMFS is correcting the error through this correcting amendment.

For further information on the September 17, 2021, Plan modifications, see the final rule (86 FR 51970, September 17, 2021). For further information on the Plan, visit the website <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan>.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is unnecessary and contrary to the public interest. The regulations in § 229.32(d) through (i) were never intended to be removed or modified in any way through the 2021 final rule, and there was no discussion or analysis of any such action in the preambles to the proposed rule or final rule. Any delay in reinstating § 229.32(d) through (i) would result in wide scale confusion among the fishing industry and law enforcement, as well as potential harm to North Atlantic right whales, humpback whales, and fin whales. Therefore, in order to avoid the negative consequences that are expected to result from unnecessary delay in making this correction, the AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment. For the same reasons, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this correcting amendment.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Endangered Species, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: February 25, 2022.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

Accordingly, 50 CFR part 229 is corrected by making the following correcting amendment:

**PART 229--AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE
MARINE MAMMAL PROTECTION ACT OF 1972**

1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

2. In § 229.32, add paragraphs (d) through (i) to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(3) through (8) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed in paragraphs (d)(1)(i) through (iii) of this section.

(i) *No buoy line floating at the surface.* No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on

a single buoy line, sinking and/or neutrally buoyant line must be used between these objects.

(ii) *No wet storage of gear.* Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(2) *Area specific gear restrictions.* No person or vessel may fish with or possess anchored gillnet gear in Areas referenced in paragraphs (d)(3) through (8) of this section, unless that gear complies with the gear requirements specified in paragraph (d)(1) of this section, and the area specific requirements listed in paragraphs (d)(2)(i) through (iii) of this section, or unless the gear is stowed as specified in § 229.2.

(i) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(A) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(B) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this paragraph (d)(2)(i).

(ii) *Net panel weak links*. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations unless exempted from this requirement under paragraph (a)(5) of this section:

(A) *Configuration 1*. (1) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request; and

(2) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(3) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(4) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(5) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(B) *Configuration 2*. (1) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak

links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request; and

(2) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(3) One weak link must be placed between the floatline tie loops between net panels; and

(4) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(5) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(6) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(iii) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted from this requirement under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Greater Atlantic Region.

(3) *Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay restricted area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

Table 17 to Paragraph (d)(3)(i)

| Point | N. lat. | W. long. |
|-------|----------|----------|
| CCB1 | 41°46.8' | 70°30' |

| | | |
|------|----------|--------|
| CCB2 | 42°12' | 70°30' |
| CCB3 | 42°12' | 70°15' |
| CCB4 | 42°04.8' | 70°10' |

(ii) *Closure*. During January 1 through May 15 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the *Federal Register* if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements*. From May 16 through December 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *Great South Channel Restricted Gillnet Area*—(i) *Area*. The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points:

Table 18 to Paragraph (d)(4)(i)

| Point | N. lat. | W. long. |
|-------|----------|----------|
| GSC1 | 41°02.2' | 69°02' |
| GSC2 | 41°43.5' | 69°36.3' |
| GSC3 | 42°10' | 68°31' |
| GSC4 | 41°38' | 68°13' |

(ii) *Closure*. From April 1 through June 30 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements*. From July 1 through March 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(5) *Great South Channel Sliver Restricted Area*—(i) *Area*. The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points:

Table 19 to Paragraph (d)(5)(i)

| Point | N. lat. | W. long. |
|-------|---------|----------|
| | | |

| | | |
|--------|----------|----------|
| GSCRA1 | 41°02.2' | 69°02' |
| GSCRA2 | 41°43.5' | 69°36.3' |
| GSCRA3 | 41°40' | 69°45' |
| GSCRA4 | 41°00' | 69°05' |

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(6) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Cape Cod Bay Restricted Area in paragraph (d)(3) of this section that lie south of 43°15' N. lat. and west of 70°00' W. long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(7) *Other Northeast Gillnet Waters Area—(i) Area.* The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge

of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(8) *Mid/South Atlantic Gillnet Waters*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (2) of this section, then the closure

and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area specific requirements, or unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this paragraph (d)(8)(ii)(A).

(B) *Net panel weak links.* The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications unless exempted under paragraph (a)(5) of this section:

(1) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(3) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(1) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(2) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string

must contain weak links that meet one of the following two configurations found in paragraph (d)(2)(ii)(A) or (B) of this section.

(3) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(8)(ii)(C)(1) and (2) of this section, or the following:

(i) The entire net string must be less than 300 yards (274.3 m) from shore.

(ii) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(iii) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(2)(ii)(A) or (B) of this section.

(iv) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(e) *Restrictions applicable to drift gillnet gear*—(1) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay Restricted Area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

Table 20 to Paragraph (e)(1)(i)

| Point | N. lat. | W. long. |
|-------|----------|----------|
| CCB1 | 41°46.8' | 70°30' |
| CCB2 | 42°12' | 70°30' |

| | | |
|------|----------|--------|
| CCB3 | 42°12' | 70°15' |
| CCB4 | 42°04.8' | 70°10' |

(ii) *Closure*. From January 1 through April 30 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (e)(1)(i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the *Federal Register* if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements*. From May 1 through December 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(2) *Great South Channel Restricted Gillnet Area*—(i) *Area*. The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points:

Table 21 to Paragraph (e)(2)(i)

| Point | N. lat. | W. long. |
|-------|----------|----------|
| GSC1 | 41°02.2' | 69°02' |
| GSC2 | 41°43.5' | 69°36.3' |
| GSC3 | 42°10' | 68°31' |
| GSC4 | 41°38' | 68°13' |

(ii) *Closure*. From April 1 through June 30 of each year, no person or vessel may set, fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements*. From July 1 through March 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(3) *Great South Channel Sliver Restricted Area*—(i) *Area*. The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points:

Table 22 to Paragraph (e)(3)(i)

| Point | N. lat. | W. long. |
|--------|----------|----------|
| GSCRA1 | 41°02.2' | 69°02' |
| GSCRA2 | 41°43.5' | 69°36.3' |
| GSCRA3 | 41°40' | 69°45' |
| GSCRA4 | 41°00' | 69°05' |

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated the Cape Cod Bay Restricted Area in paragraph (e)(1) of this section, that lie south of 43°15' N. lat. and west of 70°00' W. long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen

Bank/Jeffreys Ledge Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(5) *Other Northeast Gillnet Waters Area*—(i) *Area*. The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(iii) *Seasonal area-specific gear or vessel requirements*. From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or

vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(6) *Mid/South Atlantic Gillnet Waters Area—(i) Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless:

(A) The gear complies with gear marking requirements specified in paragraph (b) of this section;

(B) The gear is tended; and

(C) All gear is removed from the water and stowed on board the vessel before a vessel returns to port. No person or vessel may possess drift gillnet at night in the Mid/South Atlantic Gillnet Waters unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(f) *Restrictions applicable to the Southeast U.S. Restricted Area—(1) Area.* The Southeast U.S. Restricted Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north:

Table 23 to Paragraph (f)(1)

| Point | N. lat. | W. long. |
|-------|------------------|------------------|
| SERA1 | 27°51' | (¹) |
| SERA2 | 27°51' | 80°00' |
| SERA3 | 32°00' | 80°00' |
| SERA4 | 32°36' | 78°52' |
| SERA5 | 32°51' | 78°36' |
| SERA6 | 33°15' | 78°24' |
| SERA7 | 33°27' | 78°04' |
| SERA8 | (²) | 78°33.9' |

¹ Florida shoreline.

² South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N.* The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N. lat. northward.

(ii) *Southeast U.S. Restricted Area S.* The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N. lat.

(2) *Restricted periods, closure, and exemptions—(i) Restricted periods.* The restricted period for the Southeast U.S. Restricted Area N is from November 15 through

April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31.

(ii) *Closure for gillnets.* (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraphs (f)(2)(iii) and (iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any

fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29°00' N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery.* Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4⁷/₈ inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or

the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(8)(ii)(A) through (D) of this section for the Mid/South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) *Restrictions for trap/pot gear.* Fishing with trap/pot gear in the Southeast U.S. Restricted Area N during the restricted period is allowed if:

(A) Trap/pot gear is not fished in a trap/pot trawl;

(B) All buoys or flotation devices are attached to the buoy line with a weak link that meets the requirements of paragraph (c)(2)(ii) of this section. The weak link has a

maximum breaking strength of 600 lbs (272 kg) except in Florida State waters where the maximum breaking strength is 200 lbs (91kg);

(C) The buoy line has a maximum breaking strength of 2,200 lbs (998 kg) except in Florida State waters where the maximum breaking strength is 1,500 lbs (630 kg);

(D) The entire buoy line must be free of objects (e.g., weights, floats, etc.) except where it attaches to the buoy and trap/pot;

(E) The buoy line is made of sinking line;

(F) The gear complies with gear marking requirements as specified in paragraph (b) of this section; and

(G) Trap/pot gear that is deployed in the EEZ (as defined in § 600.10 of this title) is brought back to port at the conclusion of each fishing trip.

(g) *Restrictions applicable to the Other Southeast Gillnet Waters*—(1) *Area*. The Other Southeast Gillnet Waters Area includes all waters bounded by 32°00' N. lat. on the north (near Savannah, GA), 26°46.50' N. lat. on the south (near West Palm Beach, FL), 80°00' W. long. on the west, and the EEZ boundary on the east.

(2) *Closure for gillnets*. Fishing with or possessing gillnet gear in the Other Southeast Gillnet Waters Area north of 29°00' N. lat. from November 15 through April 15 or south of 29°00' N. lat. from December 1 through March 31 is allowed if one of the following exemptions applies:

(i) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery*. Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh is allowed if:

(A) The gear is marked as required in paragraph (b) of this section;

(B) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(C) The gear is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear.

(ii) *Exemption for Southeast Atlantic gillnet fishery.* Fishing with or possessing gillnet gear is allowed if:

(A) The gear is marked as required in paragraph (b) of this section; or

(B) The gear is fished south of 27°51' N.

(iii) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet gear aboard a vessel in transit is allowed if:

(A) All nets are covered with canvas other similar material and securely fastened to the deck, rail, or drum; and

(B) All buoys, high flyers, and anchors are disconnected from all gillnets.

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area—(1) Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51' N. lat. (near Sebastian Inlet, FL) south to 26°46.50' N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00' W. long.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh from December 1 through March 31 is allowed if:

(i) The gear complies with the gear marking requirements specified in paragraph (b) of this section;

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69; and

(iii) The vessel owner/operator and crew are in compliance with observer requirements found in § 229.7.

(3) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery vessels in transit.* Possession of gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh aboard a vessel in transit from December 1 through March 31 is allowed if:

- (i) All gear is stowed as specified in § 229.2; and
- (ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (*i.e.*, trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may, in consultation with the Take Reduction Team, revise the requirements of this section through a publication in the *Federal Register* if:

- (i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

- (ii) New gear technology is developed and determined to be appropriate;
- (iii) Revised breaking strengths are determined to be appropriate;
- (iv) New marking systems are developed and determined to be appropriate;
- (v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;
- (vi) NMFS determines that the boundaries of a closed area are not appropriate;
- (vii) Gear testing operations are considered appropriate; or
- (viii) Similar situations occur.

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